IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.145 of 2001.

Date of decision: 27.12.2006.

Khazana Ram & Another. **…..Petitioners**

Versus

LAC & Others. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting ?[1]

For the Petitioners: **Mr.Ashok Sud, Advocate.**

For Respondents 1 & 2: **Mr.Rajan Dewan, Additional Advocate General.**

For Respondents 3 & 4: **Mr.K.D. Sood, Advocate.**

Dev Darshan Sud,J.

The petitioners are aggrieved by the order passed by the learned District Judge, Solan, in Land Reference Petition No.4-NS/4 of 1994 and the order passed by the Collector, Land Acquisition, in case No.20/98, titled: Khajana Ram vs. Land Acquisition Collector and Others, Annexures P-10 and P-11 to the writ petition. A further prayer has been made for a direction to the learned District Judge to entertain the Reference Petition, Annexure P-9 with the writ petition.

The petitioners allege that they are the land owners of land at Darlaghat which was acquired by

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

respondent No.1 for respondents No.3 and 4. They approached the Collector and requested that Reference petition under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") be sent to the Court of the learned District Judge for re-determination of the compensation as they were not satisfied with the amount which had been granted to them. The learned District Judge, vide his impugned judgment, entertained the Reference Petition and framed three issues; namely:

(a) Whether there are grounds for the enhancement of the compensation, if so, how much? OPP.

(b) Whether the petition is within limitation? OPP.

(c) Relief.

Issues No.1 and 2 were taken up together for decision. A preliminary objection was taken by the respondents before the Reference Court on the maintainability of the reference petition not being in accordance with law as the necessary particulars as required under Section 19 of the Act had not been sent alongwith the reference petition to the learned District Judge. The contention was that the particulars required under Section 19 of the Land Acquisition Act, 1894, had not been furnished. The learned District Judge while disposing of the Reference Petition, recorded the evidence of the petitioners on the question of the value of the land

etc., but did not say anything regarding the merit of the claim of the petitioners. The learned Court upheld the preliminary objection taken on behalf of the respondents that the reference is not in accordance with Section 19 of the Act. While disposing of the Reference Petition, he observes in para-14 as under:-

> "My work is hampered in absence of the aforesaid proper information. On the other hand, respondent made available copy of the award to this court. The Award reveals that it was passed by the Collector under Section 11(2) of the Land Acquisition Act and in view of the compromise between the interesting parties i.e. land owners and the company for which the land was acquired by learned Collector a settled amount of Rs.62,000/- per bighas of the cultivated land and Rs.19,000/- per bighas of the un-cultivated land inclusive of solatum etc. was settled. Compensation as per the settled rate was paid to the petitioners. Now petitioners claim before me that they received the amount under protest. However, reference so made is not accompanied by relevant information and material as required under Section 19 of the Land Acquisition Act, so I may not in a position to decide the controversy whether the petitioners were consenting party to the award and whether they received the amount with or without protest".

The entire matter was disposed of with the direction to the Collector that he should re-consider the matter and if he feels, after going through the record that the petitioners were not consenting parties to the award he may make the reference to the Court and while doing so he should keep in mind the provisions of Section 19 of the Act. He further directed the Collector to specifically determine whether the compensation was received by the petitioners with or without protest. This is again accompanied by an observation that if the Collector feels that it is with consent, a reference may not be competent. By his order dated 30th June, 1999, the Land Acquisition Collector reproduces the direction issued by the learned District Judge and goes into a very detailed inquiry holding that the petitioners were consenting parties to the award and therefore, dismisses the application under Section 18. The record also reveals that he made some kind of ex-parte enquiry by personally visiting the other villages where lands had been acquired to ascertain as to whether they were consenting parties to the award.

I have heard learned counsel for the parties and have gone through the record. Learned counsel appearing for the respondents contends that no reference was maintainable as it is a consent award and the Reference Court did not have jurisdiction to

entertain the application. Learned counsel places reliance on ***Abdul Aziz Abdul Razak and another*** vs. ***Municipal Corpn. Of Greater Bombay and another, (1996)8 SCC, 126***, ***State of Gujarat and Others*** vs. ***Daya Shamji Bhai and Others, (1995)5 SCC 746,*** and ***Assam Railways & Trading Co.Ltd.*** vs. ***The Collector of Lakhimpur and another, (1976)3 SCC 24.*** There can be no dispute with the proposition of law relied upon by the learned counsel appearing for the respondents. However, what is startling, is the fact that the learned District Judge has recorded the evidence of the petitioners and then abruptly held that the Reference Petition is not in accordance with Section 19 of the Act. If this was the position, the learned District Judge was required to call for that information and not to have passed an order virtually delegating his judicial functions of determination of dispute under the Act to the Collector. In ***State of Kerala vs.Mariamma Abraham and another, AIR 1969 Kerala 265***, it has been held that in making a reference to the Court, the provisions of Section 19 have to be complied with. The Hon'ble High Court observed:-

> "5.In making the reference to Court the Collector completely ignored the provisions of Section 19 of the Act. He made no statement furnishing the particulars required by sub-section (1) of the section – objection having been taken to the amount of compensation,

and his award being what it was, it was most important that he should at least have stated the grounds on which he determined the compensation as required by Clause (d) of sub-section (4); neither did he prepare and forward the schedule required by sub-section (2). All he did was to send his records of the case with a covering letter, called a reference letter, of which the letter in A.S. No.421 of 1963 may be sent out as a sample:

> "Sir,
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> The records of the L.A. Case No.32/59 on the file of this office are forwarded herewith under Section 18 of the L.A. Act. The 16 cents of land in Sv.No.910/1-6 of Kuravilangadu Village, Meenchil Taluk was taken possession of by the State on 2.7.58 for the Kozha Research Farm. The amount awarded was paid to the defendant (i.e., the land-owner). A copy of the award statement No.84 dated 29.3.59 showing the name of the defendant, the amount awarded etc. is also enclosed.
>
> Yours faithfully"
>
> Sd/-
>
> Revenue Divisional Officer"

This is no reference at all as required by the Act and we think that the Court would have been justified in returning it and calling for a proper reference".

In the present case, if the particulars under Section 19 had not been furnished, the reference should have been returned for furnishing the particulars in accordance with law and not to convert the proceedings before the Collector into a full fledged trial. This is abdication of necessary judicial function by the Court which is impermissible in law. It is now well established that the proceedings before the Reference Court are judicial proceedings and the question as to whether a reference is competent or not is to be decided and disposed of by the learned District Judge and not by the Collector. Reference to be made to ***Patel Vashram Copalbhai and others*** vs. ***State of Gujarat and another AIR 1989 Gujarat 231*** and ***Mohanlal*** vs. ***B.G. Deshmukh and Others, AIR 1985 Bombay 188.***

The proceedings before the Reference Court are judicial in nature and cannot be treated as being conclusive of the rights of the parties. The Act does not contemplate the delegation of this function to any Authority whatsoever. Moreover, under the Land Acquisition Act, a petition which is being tried by the Reference Court is not an appeal against an award and the Court cannot take into account material relied upon by the Collector unless it is produced and proved before the Court in accordance with law. This position of law already stands settled by the Hon'ble Supreme Court in ***Chimanlal Hargovinddas*** vs. ***Special***

Land Acquisition Officer, Poona and another, AIR 1988 SC 1652. The Hon'ble Court held as under:-

> "**4.** The following factors must be etched on the mental screen:
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> (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
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> (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.
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> (3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the

basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

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The same proposition has been reiterated in ***State of Maharashtra and another*** vs. ***Chandrakant @ Pomaji Vasudev Somshetti (since deceased by LRs) and others, AIR 1991 Bombay 245.***

The learned District Judge, while dealing with the matter has ignored these well settled principles of law.

Learned counsel for the respondents made a sustained attempt to establish that the award which was passed is a consent award and no reference was

maintainable. For this purpose, he took me through the order of the Collector to substantiate the stand of the respondents. As I have already held that the District Judge was not competent to have delegated his essential duties and functions to the Collector and when calling for information under Section 19 he could not further direct that the Collector should also determine as to whether the reference is competent or not, this Court need not decide this question which is otherwise within the jurisdiction of the Reference Court.

The writ petition is allowed. The orders of the learned District Judge dated 31.10.1998 (Annexure P-10) and that of the Collector dated 30.6.1999 (Annexure P-11) are quashed and set aside. The learned District Judge is directed to take the reference on the record and to proceed in accordance with law. The Collector is directed to comply with the mandatory provisions of Section 19 of the Land Acquisition Act, 1894. I have not expressed any opinion on the merits of the rival contentions of the parties. The learned District Judge shall proceed to dispose of the reference expeditiously and in accordance with law. The writ petition is disposed of. There shall be no order as to costs.

December 27, 2006. **(Dev Darshan Sud)**
(aks) **Judge.**